method of prevention. Of course, the latter lays the foundation for establishing negligence, but it does not in itself indicate that the injury could have been foreseen. As to public policy, there is still some objection. But subsequent repairs are admitted to show ownership or control. *O'Malley* v. *Twenty-Five Associates*, 170 Mass. 471, 49 N. E. 641. And also to rebut testimony descriptive of the premises before the injury. *McRickard* v. *Flint*, 114 N. Y. 222, 21 N. E. 153. The objection certainly has less force here than when applied to negligence, and it seems proper to confine it to that situation. In accord with the principal case on causation, see *Kuhn* v. *Illinois Central Ry. Co.*, 111 Ill. App. 323; *Texas & N. O. R. Co.* v. *Anderson*, 61 S. W. 424 (Tex. Civ. App.). In accord with it on the possibility of prevention, see *St. Louis, etc. Ry. Co.* v. *Johnston*, 78 Tex. 536, 15 S. W. 104; *Lind* v. *Uniform Stave and Package Co.*, 140 Wis. 183, 189, 120 N. W. 839, 842.

EVIDENCE — HEARSAY: IN GENERAL — ADMISSIBILITY OF TELEPHONE CONVERSATIONS — RES GESTA. — In an action on an insurance policy the issue was whether the company had received notice of an assignment to the plaintiff. The witness testified that he had seen the policy-holder go to a telephone, had heard him ask for the company and give the notice, and that immediately thereafter the policy-holder had told him that the company was willing to make the transfer. *Held*, that the evidence is admissible. *Northern Assurance Co.* v. *Morrison*, 162 S. W. 411 (Tex. Civ. App.).

The difficulties of the principal case are distinct from the line of authority which permits the person who did the talking to testify as to what he had heard over the telephone provided he recognized the voice. *Shawyer* v. *Chamberlain*, 113 Ia. 742, 84 N. W. 661. See 20 HARV. L. REV. 156. Here both aspects of the testimony seem to violate the hearsay rule. As to the alleged notice, it is hearsay because the witness has no personal knowledge to indicate what individual, if any, is at the other end. It might be accepted as a matter of common knowledge that hearing the call placed practically insures this identity were it not for the fact that the listener has no means of assuring himself that the user of the telephone is not either carrying on a wholly fictitious conversation or talking to an accomplice. But when the lack of personal knowledge has been supplied by extrinsic evidence that a real conversation took place, the evidence becomes admissible. Authority on the point is scant, but it recognizes this distinction. *Miles* v. *Andrews*, 153 Ill. 262, 38 N. E. 644; *McCarthy* v. *Peach*, 186 Mass. 67, 70 N. E. 1029. It also appears unsound for the court to admit the subsequent declaration as part of the *res gesta*, since it is neither contemporaneous nor properly explanatory. Its only force is to indicate what the other party said, and in that respect it is pure narration. *Waldele* v. *New York Central & H. R. R. Co.*, 95 N. Y. 274. See THAYER, LEGAL ESSAYS, 207.

EVIDENCE — JUDICIAL NOTICE — REPORTS TO RAILROAD COMMISSION. — A finding by a railroad commission that certain rates were unreasonable was based on facts contained in certain reports filed, pursuant to statute, by other railroad companies with the commission itself, and with the state board of assessments. These reports had not been introduced in evidence, but were spread on public records. *Held*, that the reports were proper subjects of judicial notice. *Chicago & N. W. R. Co.* v. *Railroad Commission*, 145 N. W. 216 (Wis.).

Cases of judicial notice of census returns and of legislative journals seem most closely analogous. *Chicago & A. R. Co.* v. *Baldridge*, 177 Ill. 229, 52 N. E. 263; *Dane County* v. *Reindahl*, 104 Wis. 302, 80 N. W. 438. But by the better view even the latter are merely admissible evidence. *Grob* v. *Cushman*, 45 Ill. 119. See WIGMORE, EVIDENCE, § 2577. The propriety of judicial notice, by a strictly judicial tribunal, of the contents of records like those in the principal

case seems even more questionable. Since they are unofficial statements, their hearsay element renders them less trustworthy, and their contents are neither matters of general notoriety nor of general public interest. Such reports are often made admissible evidence by statute. See, for example, INDIANA ACTS, 1907, ch. 241, § 5. But hearings before administrative boards are conducted under more liberal rules. See *Interstate Com. Comm.* v. *Baird*, 194 U. S. 25, 44, 24 Sup. Ct. 563, 569; *Cincinnati, H. & D. R. Co.* v. *Interstate Com. Comm.*, 206 U. S. 142, 149, 27 Sup. Ct. 648, 651. In general, even here, information gleaned outside a particular hearing may not be used to support the finding in that hearing. *Atlantic, C. L. R. Co.* v. *Interstate Com. Comm.*, 194 Fed. 449. See *United States* v. *Baltimore & O. S. W. Ry. Co.*, 226 U. S. 14, 20, 33 Sup. Ct. 5, 6; *Interstate Com. Comm.* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 93, 33 Sup. Ct. 185, 187. But this requirement seems to be merely to insure fairness, and nothing unfair appears in taking judicial notice of the contents of public records provided for the very purpose of informing the commission, and open to the use of all concerned.

GOOD WILL — SOLICITATION OF CUSTOMERS AFTER INVOLUNTARY SALE OF GOOD WILL. — The defendant was a member of a partnership in the boot trade which made an assignment for the benefit of creditors. The assignee sold the business with the good will to the plaintiff. The defendant later in the employment of another firm solicited the trade of his former customers. *Held*, that the defendant will not be enjoined. *Green & Sons* v. *Morris*, Weekly Notes 65 (Eng. Ch. Div., Feb. 6, 1914).

For a discussion of the question here raised, see this issue, p. 670.

HUSBAND AND WIFE — CONTRACTS BETWEEN HUSBAND AND WIFE — VALIDITY OF SEPARATION AGREEMENTS. — A husband and wife, living apart, made an agreement under seal with a trustee by which the husband promised, in contemplation of a reconciliation, to pay the wife a weekly allowance; and in the event of a future separation because of his drinking or cruelty, he agreed to pay for her comfortable maintenance. *Held*, that the agreement is valid. *Terkelsen* v. *Peterson*, 104 N. E. 351 (Mass.).

The Massachusetts court has held that a note given the wife by her husband in consideration of the resumption of the marital relation is void on the ground that it is against public policy for money to have influence in such a matter. *Merrill* v. *Peaslee*, 146 Mass. 460, 16 N. E. 271. *Contra*, *Barbour* v. *Barbour*, 49 N. J. Eq. 429, 24 Atl. 227; *Burkholder's Appeal*, 105 Pa. 31. As the court points out, however, the arrangement here is fixing a sum for the support of the wife, due her from him, and not a payment for her return. The stipulation for support in the contingency of fresh separation is more troublesome. A separation agreement to take effect immediately, or made when separation has occurred, is valid. *Clark* v. *Fosdick*, 118 N. Y. 7, 22 N. E. 1111; *Henderson* v. *Henderson*, 37 Ore. 141, 60 Pac. 597. But an agreement for a future separation is held void. *Hindley* v. *Westmeath*, 6 B. & C. 200. In the principal case the contingencies on which separation might occur, drinking and cruelty, would be grounds for divorce. This might well weigh in favor of the agreement, although it is to be remembered that courts wish to keep divorce matters in their own hands. *Harrison* v. *Harrison*, [1910] 1 K. B. 35. The court also says that the agreement is for payment after separation, and not for separation; but this distinction seems invalid and is not supported by the cases. On the whole the agreement here is certainly more in favor of the marriage relation than against it, and the court has justly held it valid. *Hite* v. *Hite*, 136 Ky. 529, 124 S. W. 815.

INJUNCTIONS — ACTS RESTRAINED — ILLEGAL CLAIM TO PUBLIC OFFICE. — The office held by the plaintiff was illegally declared vacant and a successor